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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

**SEP. 21 1993**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of

**KR PARTNERS****KES COMMUNICATIONS, INC.****LORI LYNNE FORBES**

For a Construction Permit for a  
 New FM Station on Channel 256C  
 at Waimea, Hawaii

) MM DOCKET NO. 93-53

) File No. BPH-911001MB

) File No. BPH 911003MH

) File No. BPH-911004MH

To: Administrative Law Judge  
 Joseph P. Gonzalez

**MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS ON**  
**JOINT REQUEST FOR**  
**APPROVAL OF SETTLEMENT AGREEMENTS,**  
**PETITION FOR LEAVE TO AMEND,**  
**and**  
**MOTION FOR SUMMARY DECISION**

1. On August 23, 1993, KR Partners ("KR"), KES Communications, Inc. ("KES"), and Lori Lynne Forbes ("Forbes") filed a Joint Request for Approval of Settlement Agreements ("Joint Request"). On August 23, 1993, KR also filed a Petition for Leave to Amend its application. On August 26, 1993, KR filed a Motion for Summary Decision. The Mass Media Bureau submits the following consolidated comments.

2. The Joint Request is accompanied by two agreements which collectively contemplate a universal settlement of this proceeding. The first agreement contemplates dismissal of the KES application and grant of the construction permit to KR, as amended. KR proposes to amend its application to specify a new corporation, d/b/a Hawaii

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Broadcasting Corporation, Inc. ("HBC"), in which Julie K. O'Connor (a General Partner holding a 75 % equity interest in KR)<sup>1</sup> and Karen E. Slade (KES' 100% shareholder) will be equal (50%) shareholders.

3. The second agreement accompanying the Joint Request contemplates dismissal of the Forbes application. In consideration for the dismissal of the Forbes application, KR and KES propose to pay Forbes the sum of \$32,500.

4. Principals of KR and KES, and Forbes state that the settlement agreements would serve the public interest by hastening the inauguration of a new FM broadcast station in Waimea, Hawaii. The applicants also declare that their respective applications were not filed for the purpose of reaching or carrying out a settlement. Furthermore, Forbes provides documentation demonstrating that the amount she proposes to receive from KR and KES in consideration for the dismissal of her application does not exceed the legitimate and prudent expenses which she incurred in preparing, filing, and prosecuting her application.

5. KR seeks summary decision of a financial issue specified in the *Hearing Designation Order*, DA 93-239 (released March 16, 1993) ("HDO"). According to the HDO, KR initially estimated that it would require \$388,300 to construct and operate its new station for three months without reliance on revenues. In order to meet that estimate, KR represented in its application that it was relying on a loan commitment in the amount of \$400,000 from an individual by the name of George Handgis ("Handgis"). Subsequently, however, Handgis withdrew his commitment, and KR was compelled to seek financing elsewhere. In a pre-designation amendment, filed on June 23, 1992, KR represented that it

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<sup>1</sup> KR's only other principal, Nelson Parker, a General Partner who holds a 25% equity interest in the applicant, proposes to withdraw entirely in exchange for no consideration.

had secured a new loan commitment, albeit in the lesser amount of \$250,000, from a new source, BDC Services, Inc. The amendment also revised KR's cost estimate for the station down to \$203,450.

6. The HDO accepted that portion of KR's amendment which specified a new source of funding. However, it rejected KR's revised cost estimate for lack of good cause. Consequently, because KR's original cost estimate (\$388,300) exceeded the amount available from KR's new source of funding (\$250,000), the HDO specified a financial qualifications issue against KR.

7. In its Motion for Summary Decision, KR states that as part of the proposed universal settlement and merger of KR and KES into HBC, it has secured a loan commitment from First Interstate Bank in the amount of \$400,000. This change is reflected in the above referenced amendment filed by KR on August 23, 1993. The amendment also represents that the cost of constructing and initially operating the station will be \$239,225.<sup>2</sup> KR maintains in its Motion for Summary Decision that the new loan commitment of \$400,000 is more than enough to cover the proposed estimate of \$239,225. Accordingly, KR maintains that summary decision of the financial issue is warranted.

8. The Bureau submits that the Joint Request satisfies the requirements of Section 73.3525 of the Commission's Rules, which implements Section 311(c)(3) of the Communications Act of 1934, as amended. Specifically, copies of the settlement agreements have been timely filed, and the applicants have established that approval of the agreements would serve the public interest and that none of the applications was filed for an improper

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<sup>2</sup> This is the same amount which KR represented in a post-designation amendment filed as a matter of right on May 27, 1993.

purpose. Additionally, the proposed merger between KR and KES appears to be a bona fide merger, and Forbes has demonstrated that the monetary consideration that she will receive does not exceed her legitimate and prudent expenses. See, Settlement Agreements, 6 FCC Rcd 85 (1990), modified, 6 FCC Rcd 2901 (1991). Furthermore, the Bureau believes that good cause exists pursuant to Section 73.3522(b) of the Commission's Rules for acceptance of the KR amendment inasmuch as it is an integral part of the universal settlement package.<sup>3</sup>

9. As KR notes, summary decision is warranted when a party demonstrates that "there is no genuine issue of material fact for determination at the hearing." See, Section 1.251 of the Commission's Rules. In the instant case, KR has demonstrated that the proposed prevailing applicant, HBC, is financially qualified. HBC has secured a loan commitment from an established financial institution in the amount of \$400,000. This amount is far in excess of HBC's estimate of \$239,225 needed to construct and initially operate the station. The Bureau also notes that the loan commitment exceeds KR's original cost estimate of \$388,300. Because there is no longer any question about KR's (or HBC's) financial qualifications, the financial issue specified against KR should be resolved favorably in KR's favor.

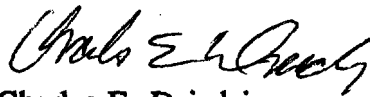
10. Based on the foregoing, the Joint Request should be granted, the merger and settlement agreements should be approved, the KES and Forbes applications should be dismissed with prejudice, KR's Petition for Leave to Amend should be granted and its amendment accepted, the financial issue specified against KR should be resolved in KR's favor, and the amended application in the name of Hawaii Broadcasting Company, Inc.


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<sup>3</sup> The Bureau notes that KR's request for a waiver of Section 73.3573(b) is superfluous because the "major/minor change" distinction does not apply to post-designation amendments. See Sections 73.3522(a) and 73.3522(b). Accordingly, it is not necessary for the Presiding Judge to consider the waiver request in ruling on the proposed universal settlement.

should be granted.

Respectfully submitted,  
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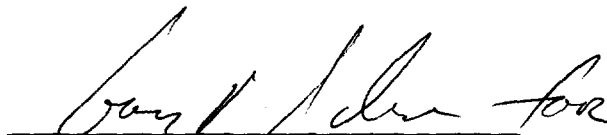
## **CERTIFICATE OF SERVICE**

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 1st day of September 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Consolidated Comments on Joint Request for Approval of Settlement Agreements, Petition for Leave to Amend, and Motion for Summary Decision" to:

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